

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT L. RUCKER,
Plaintiff,

-vs-

CITY OF PITTSBURGH, TIMOTHY
MATSON, individually and, in
his official capacity, LEROY
HAMMOND-SHROCK, individually
and in his official capacity,
OFFICER JOHN DOE, (unidentified
in name and number),
individually
and in his official capacity,
Defendants.

Civil
Action
No.
08-1213

DEPOSITION OF: DAVID WRIGHT

DATE: November 6, 2009
Friday, 9:38 a.m.

LOCATION: City of Pittsburgh
Department of Law
Room 313 City-County Bldg.
414 Grant Street
Pittsburgh, PA 15219-2453

TAKEN BY: Plaintiff

REPORTED BY: Beth E. Welsh
Notary Public
QCR Reference No. BW2046

DEPOSITION OF DAVID WRIGHT,
a witness, called by the Plaintiff for examination,
in accordance with the Federal Rules of Civil
Procedure, taken by and before Beth E. Welsh, a Court
Reporter and Notary Public in and for the
Commonwealth of Pennsylvania, at the offices of
Michael E. Kennedy, Esquire, City of Pittsburgh
Department of Law, Room 313 City-County Building,
414 Grant Street, Pittsburgh, Pennsylvania, on
Friday, November 6, 2009, commencing at 9:38 a.m.

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS TIMOTHY MATSON, individually
and, in his official capacity, LEROY HAMMOND-SCHROCK,
individually and in his official capacity, OFFICER
JOHN DOE, (unidentified in name and number),
individually and in his official capacity:

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* I N D E X *

Examination by Ms. Graham	4
Certificate of Court Reporter	94
Errata Sheet	95
Notice of Non-Waiver of Signature	96

* INDEX OF EXHIBITS *

Deposition Exhibit 1	82
Deposition Exhibit 2	82
Deposition Exhibit 3	82

DAVID WRIGHT,
having been duly sworn,
was examined and testified as follows:

EXAMINATION

BY MS. GRAHAM:

Q. Mr. Wright, we just met this morning. My name
is Kelly Graham, and I represent Mr. Rucker in a
case against the City and certain individual
police officers. I'm going to be asking you a
few questions today. I understand, based upon
your background, that you might have some
relevant information about the use of tasers in
the City of Pittsburgh Department.

If at any time you do not understand my
question, please let me know, and I'll be happy
to rephrase it. If you answer it, I'll assume
you understood it.

If you need to take a break at any time,
let us know that, and we'll be happy to
accommodate you, although I don't expect you to
be here very long today.

If you could please give a verbal response
to a question so that the court reporter doesn't

present or --

A. From 2003 to 2007. The taser usage grew though. 2003 we only had approximately 100 tasers on the street, if that's the year we initially started, because we bought 100 tasers, and then as we purchased and officers purchased more and more tasers, the use of tasers went up because more officers had them.

Q. In your training with the officers do you distinguish between using the OC spray versus the taser and one's better than the other?

A. Yes, ma'am.

Q. What do you teach?

A. The situation dictates. By and large statistically the taser is more effective. There are going to be times when the taser is not going to be something that you want to use and OC spray would still be your best option.

Q. What type of example can you give me where you would not want to use a taser?

A. This time of the year perhaps, as we're moving into our winter season, people are going to be heavily clothed, and the taser won't be as effective because clothes act as insulation and so they won't feel the effects of a taser, so

35

lot of other factors you have to take into consideration.

Q. You mentioned a couple different resistance, passive, defensive, active, and you said something else.

A. Assaultive.

Q. Assaultive, okay. What is the distinction between passive and defensive in your mind?

A. A passive resister -- the most common passive resister would be a protester of some sort perhaps at an abortion clinic, maybe at a military recruiting center where they just sit down. When we use force we generally use it for defense or control. We need to somehow control this individual to move them along, and they're not doing anything other than just sitting there using dead weight. That's a passive resister, somebody that's just -- if you wanted me to get up off this chair and I said, basically, no and I just sat here, this would be a passive resistance.

Q. But you'd have to be picked up out of the chair.

A. I'd have to be picked up, or you'd have to use some sort of come-along hold, pressure point

perhaps OC spray would be a better option if somebody's dressed with thick clothing. If they're around combustible material you want to avoid the taser because the electrical discharge could possible set off -- create a fire or explosion. So if I'm around gas, for example, I'll use my pepper spray versus the taser. So the environment may dictate, the situation may dictate.

Q. Explain to me, in your words, since you are the lead instructor when the use of a taser is appropriate. What level of force does that fit in with the City of Pittsburgh's policies?

A. It's a restraint control device, and the use of the taser is going to be very much incident specific. It's going to be based on the resistance being received.

Q. What level of resistance does an officer need to see in order to deploy that taser?

A. Generally it's going to be -- and this is a general statement, but anything above passive resistance. In other words, defensive resistance, active resistance, assaultive resistance on up. But, again, that's a very general thing for me to say because there's a

36

that develops some pain to make me want to move, something along those lines.

Q. In that type of scenario would you recommending that a taser gun be deployed?

A. For a passive resister using dead weight only we generally teach do not use the taser or pepper spray there.

Q. Okay.

A. At first.

Q. I'm sorry?

A. At first.

Q. Okay.

A. We'd start at come-alongs, pressure points, things of that nature.

Q. You also mentioned defensive resister. What does that mean?

A. Well, now say you want me to move and I start grabbing onto this chair, start holding onto the table, I start grabbing things, that would be a form of defensive or active resistance even. You come at me, you put hands on me, I kind of shove you. I don't punch you, I'm not trying to hurt you, but you're going to need force on me, not necessarily for self defense purposes, but for control purposes. So you're going to have

to use force on me for control to effect an arrest, but I'm not trying to hurt you, I'm just -- you know, I'm grabbing on -- I'm holding on to something and you're not going to -- you're going to have to do something to get me to move along other than just pick me up.

Q. Okay. In that type of scenario where you have a defensive resister, the way you've described it for this situation, what is it that you teach your officers, what steps they should do?

A. Well, we teach them a variety of options. At that level -- again, you have to look at the actor, you have to look at all kinds of things, what's the best options based on the resistance being received there. So you would have at your disposal for something like that perhaps pepper spray, perhaps the taser, perhaps the use of physical control. You may have to come in -- if I'm holding onto a chair, like the railing of a chair real hard, you might have to come down and punch my radial nerve to create pain to get me to let go of it, you might want to come down with a taser, use a taser on me to get me to let go of it. So you have options, the police officers have specific options, and those

options are based on what would work best.

Q. Okay.

A. Obviously, keeping in line the rules and the laws that govern us as police officers too.

Q. But in that circumstance where you have someone not attempting to hurt the officer, but holding on and not moving freely, you would teach that the use of a taser is appropriate?

A. It's possibly appropriate.

Q. When you say possibly appropriate, what are the officers being taught? Are they allowed to use their discretion, is it basically, if you have this type of resistance, you have all these options available to you, pepper spray, taser and even physical.

A. (Witness nodding head up and down.)

Q. You have to answer verbally for her. Is that a yes or a no?

A. I didn't know you were done. I thought you were still talking.

Q. Well, I'm going to do it piece by piece so that we -- I don't want to misunderstand you or say something you didn't say. If you have a situation where you have a defensive resister, as you've described it, let's use your example,

39

and I said in that circumstance would you teach your officers that it's appropriate to use the taser, and you said it is possibly appropriate. So I'm trying to understand where the line is for them. What are they being taught, or are they being said you need to use your own discretion?

A. You have to give me more. Is it an 80-year-old lady holding on to it? Is it a young man holding on to it? Is it a sizable man holding on to it? My force options will change based on the subject factors, the officer factors.

Q. Okay.

A. And they are taught discretion. A police officer can't be handcuffed on it, this has to be this way. We have to look at specifics of that incident. So, you know, they're taught force options, and they learn best techniques through training, through experience, through education. So I just can't blindly say this is a taser in this case, this is a hands-on in this case. There's a lot of other factors you have to take into account. You know, if I have an older, elderly person, I might go for a come-along hold, I might come and just try to

40

pull them out. If I have somebody younger and in shape, you know, I might have to go with a strike. If I have somebody where I don't think a strike is going to be very effective, you know, the body language, that's another form of resistance we haven't talked about, body language, that tells you a lot. If I'm sitting here and I'm staring at you, I'm giving you this look, you know, it kind of tells you maybe I'm going to assault you, it's reasonable to assume, you know, the eyes and my body language, the intensity, you know, I might say to myself I'm not going to touch this individual because if I go close to this person, an assault is imminent, so I'm going to use my taser because I can end this safely and legally through distance. So the taser may be applicable sometimes, and sometimes, you know, it might be more applicable to go hands-on. You have to look at the specifics. So I can't just generally say taser, hands, I have to look at, you know, a specific incident and say, okay, this would have been a good time for the taser.

Q. Does the City of Pittsburgh have a force of continuum?

taser one time, and that was on a dog.

Q. In intermediate force you mentioned the baton, are there other weapons that the officers can carry besides the baton that would fit into that category?

A. Impact weapons would be -- instead of using the term batons, I would just say impact weapons, so it would be a flashlight perhaps, a blackjack, the use of a radio, environmental impact weapons, officers have had to use -- I've read reports where officers have had to use toilet seats as impact weapons.

Q. Okay. As part of your responsibilities in reviewing these use of force reports, have you ever investigated or looked into a use of force report that was not red flagged? In other words, it's in your stack, and you're going through it and something in your mind seems not right, have you ever had occasion to have that happen?

A. Yes, ma'am.

Q. Can you give me any idea of how often that might have happened in your career?

A. I'd say a couple times a year I'll be reading a report, I'll read a report and I'll have to --

you know, not just taser related, but just

officer safety related where, you know, the officer maybe should have done this or done this and it really affected their safety, or maybe it was a force issue. I'll make my supervisors aware of it, and what they'll do is we'll address it and we'll retrain them.

Q. When you say use of force issue, that's a circumstance where you may have thought the officer did not use the appropriate level of force?

A. Oftentimes they don't use enough force.

Q. Okay. In your role have you ever found that an officer actually used too much force?

A. I would have to go back and look at all of my reports and everything, but yes, yes, I have.

Q. Do you have any idea how many times you've actually determined that an officer might have used too much force in a situation?

A. No, I don't have a number on it. I can tell you it's not often. Truthfully, the reports I read, the reports reveal that officers by and large don't use enough force. Let me rephrase that. For the vast majority they're right on the number, but when an officer seems to error one

way or the other, it puts their safety at risk, they don't use enough force. They're legally allowed to use this amount and they don't.

Q. Did you provide any input based upon your certifications and the training you had into the City of Pittsburgh's taser use policy?

A. Yes, ma'am.

Q. What input did you provide, what was your role?

A. I provided a fair amount of input in terms of getting other department's policies, looking at best practices across the country, looking at policies that Taser could compile for me, some of their recommendations, also -- not just Taser, we looked at Stinger, which is their competitor, we looked at some of their recommendations. We look at also things that are going on, trends that -- for example, cuffing under power. The policy is made up of a lot of best practices through departments and through manufacturers across the country, and a lot of that was compiled by me.

Q. Okay. Am I correct that the City of Pittsburgh's use of force policy related to tasers would -- obviously it would fall under the restraint and control section of the --

A. Yes, ma'am.

Q. -- continuum? Okay. I guess where I'm -- and it's probably me being confused, but where I have a question is once an officer -- they're on the scene, if verbal direction is possible and they try it and it's not working, when they get to that third level, do the officers have the discretion to use any of the -- let's take canine out of it in case they would have to be called, six different types of deployments, can they use any of those -- once they hit that level, are they free to use any one of those?

A. Based on the resistance being received.

Q. Okay.

A. Again, you have to look at, you know, as I was talking earlier, you know, a lot of other factors, officer/subject factors, prior knowledge. If I come across somebody and I have prior knowledge and he's maybe let's say 5'5 and 140 pounds and he's giving me this, on the surface that doesn't appear, but I have prior knowledge, hey, this guy is a professional boxer, it's going to change how I do business. Age plays a factor. As I mentioned, the 80-year-old lady versus somebody that's younger,

a male, stronger, that's going to play a difference. But they have to look at that. And they've been -- you know, they're taught reasonable force, reasonable force, we hit that point in our training, and they have to use their education, their knowledge, their training to pick the most reasonable force option out of restraint and control.

Q. Okay.

A. There's no black and white to use of force. You know, you have to pick what's reasonable based on the scenario.

Q. I understand that I think, I'm just trying to understand from the prospective of what these officers are being taught, and I understand obviously, I'm sure you're teaching them use your best judgment in every situation.

A. We teach them Graham vs. Connor, we teach them about policies, we teach them the federal guidelines, we teach them the state laws, we teach them about policies and we teach them how to be trained on specific tactics too, and then with that they take all that knowledge and they go out in the street and they make the decision.

Q. Okay. And I guess where I'm trying to -- and

51

be honest with you, I have a professional boxer coming at me with fists, I'm drawing my firearm and getting behind the car. I'm not going to take a punch to the face with a professional boxer.

Q. Okay. When you're teaching them the constraint and control, let's take immediate and deadly force out of the picture, that's not in our scenario for this question, when you're teaching them the restraint and control, as I understand then, you do not teach them to try this method before you try this method, there's no basic order?

A. Sometimes we do, sometimes we don't.

Q. What do you mean sometimes you do, sometimes you don't?

A. Let's say we have that 60 or 80-year-old lady.

MR. CAMPBELL: She's getting younger.

BY MS. GRAHAM:

Q. I'm trying to think am I going to be safe at some point.

A. Let's say we have that 80-year-old lady and you try the come-along hold and it doesn't work, then you might have to systemically go up that ladder so to say, but you arrived there and it's

you may not be able to give me an answer to my specific question, but what I'm trying to understand is based upon looking at policies and some of the other testimony that I've had, when you get to the point where you need to use some form of restraint and control, are the officers allowed to use their discretion as to which they pick? Even if it's not what you would have picked, are they still completely okay if they pick any of the six regardless of whether or not you felt they should have picked the six or, when they're in this category of restraint and control, are they still supposed to try the come-along first or try the pressure points or try the OC spray, or can they just walk in and say I told you to stop doing it, you're not doing it, boom, here's the taser?

A. They're taught to use the best option based on the resistance being received. So they're not taught like a ladder, you have to go boom, boom, boom, boom, absolutely not. In fact, they're not even taught -- they might have to -- all of a sudden they might come into it and, you know, they have that knowledge, we have that boxer again, all of a sudden the fists come up and, to

52

reasonable to assume that, hey, you know, based on the officer/subject factors, even starting at this lower level -- for example, bring it back down to that 25-year-old man and he's showing body language, it would be reasonable to assume if I go in here hands-on, I'm running the risk of hurting -- getting myself put into a position where I might be hurt, where, okay, the law's allowing me -- because we don't have to use the least level of force, the law doesn't say that, we have to use the most reasonable. And that's why officers don't use enough force because they get in this mind set we have to use the least or the minimum amount of force, that's incorrect. Police officers do not have to use the minimum amount. We have to use force that's necessary and reasonable and it's based on the incident, and Graham vs. Connor, which is the landmark case in use of force, it makes provisions saying, hey, this officer might choose this, this officer might choose this, you might choose this, you know, because what we perceive and how we handle things are going to be different, but they're basically around the same levels. So what we try to do is these are around the same

1 that point.

2 Q. Okay. Is that something that you would question

3 an officer about when you're reviewing these

4 reports?

5 A. That may be something that I would question an

6 officer about.

7 Q. But as I understand, and tell me if I'm wrong

8 from your earlier testimony, based upon the City

9 of Pittsburgh's policy, an officer, once they

10 reach that level of resistance -- restraint and

11 control, excuse me, is he within his legal

12 rights to pull the taser on her?

13 A. To pull the taser?

14 Q. To deploy it, I'm sorry.

15 A. (Gesturing.)

16 Q. I'm not trying to trick you, all I'm trying to

17 understand is when they get to this step, can

18 they utilize any of these techniques without

19 there being any Monday morning quarter backing

20 from you or anybody else? If they said, hey, I

21 tried these two things, they didn't work, are

22 all of these options equally available to them

23 under any situation?

24 A. Well, it goes on probability of injury

25 generally. For example, the soft empty hand

1 control carries with it a lower level of

2 probability of injury and then as you go down

3 to -- what's the last one I have on there,

4 probably hard empty hand control, there's a

5 higher probability of injury, and then what's in

6 between it, that's how we try to list the

7 probability of injury. So is anything on the

8 table, we're looking at -- we look at, again,

9 the incident itself. Would that taser be a

10 force option available? Yes, it would be a

11 force option possible to that officer given the

12 circumstances. Is it the best force option?

13 Maybe not.

14 Q. Okay. Injury to whom? You said we look to the

15 injury --

16 A. Both. For example, we teach somebody to punch

17 somebody, we teach them to punch them as hard as

18 we can. Why? Because that makes it safer for

19 the actor, it makes it safer for the officer

20 because if I have to only hit once, I don't have

21 to hit you five, six times, which means I'm not

22 hitting all these different areas, which means

23 maybe I can, you know, end the use of force

24 encounter. The longer the use of force

25 encounter plays out, the higher the potential

1 for injury for both the officer and the actor.

2 THE WITNESS: If it's possible, I need

3 to use the restroom.

4 MS. GRAHAM: Sure.

5 ----

6 (Whereupon, there was a brief pause in

7 the proceedings.)

8 ----

9 BY MS. GRAHAM:

10 Q. Just before the break we were talking about --

11 you mentioned the officers are taught about the

12 level of injury. And using just the restraint

13 and control category, what would the order of

14 level of injury to someone be generally taught?

15 I understand there's going to be exceptions to

16 every rule, but generally what are they taught?

17 A. Generally, the probability of injury. In other

18 words, a soft empty hand, use of a pressure

19 point carries with it a lower probability of

20 injury than, if I would say, use a closed fist

21 punch.

22 Q. Where would OC spray or taser fit into that?

23 A. Generally, it goes at the lower end, there's a

24 lower probability of injury, so you'd have your

25 come-along holds, pressure points, just

1 underneath that you'd have your taser and pepper

2 spray, OC/taser because they're considered about

3 the same.

4 Q. Are you given any training on the effects of the

5 taser on the person who's actually -- that it's

6 been deployed into?

7 A. Have I been given any training on it?

8 Q. Yes. What is your understanding as to what

9 injury, if any, a taser can cause?

10 A. Well, I know firsthand, I've been hit with a

11 taser several times.

12 Q. Are you one of those ones that volunteered to

13 be --

14 A. I've felt the effects of the M26, the X26 and

15 the C2 on more than one occasion, so I've been

16 under the effects of a taser.

17 Q. We'll talk about what happened with your

18 personal experience with the taser, but what

19 training, if any, does the City provide you as

20 to what injury it can cause?

21 A. Well, first, the highest probability for injury

22 with the taser, if you're going to get hurt with

23 the taser, it's going to be the fall because

24 you're incapacitated and you're going to fall to

25 the ground. So it's what we call a secondary --

the injury is secondary. It's not the taser, it's the fall.

Q. Okay.

A. So if injury is going to occur, it's going to be from the fall. There is a potential risk for connective tissue damage perhaps because your muscles contract. I always say it's like a really hard workout and then some because your muscles are contracting. When you get the taser deployed on you, the greater the spread, the greater the effectiveness. In other words, if the taser is deployed here and it's deployed here (indicating), my muscles throughout my whole body are going to be contracting hard. If it's more like in the leg, then it's going to be central to that leg itself. So you're looking at possible, you know, connective tissue injury. So there's some injury potential perhaps, you know, if you hit a sensitive area. For example, a taser probe is deployed and it goes into the eye, obviously you're looking at potential injury there too. So in regards to injury potential, it's addressed.

Q. Are the officers taught where they should deploy the taser, is there a --

you can get the legs and the upper body and the lower body affected so that you can incapacitate the entire body for that five seconds.

Q. So if I understood your answer, you teach them, if possible, to try to shoot so that the belt would be -- the one taser would go above it and one would go below it?

A. Yes, and we also teach -- well, that's one of the options, of course, if you're facing somebody frontal, you know, then we would teach kind of a torso shot.

Q. Is there a reason for the torso?

A. Again, we try to get the upper body and the lower body effect. The preferred range, the optimal range seven to fifteen feet and that's so that we can get the entire body effect. The greater the spread, the greater the effectiveness. That's not always possible.

Q. Do you teach the officers acceptable ranges to use the taser as of you can't be too far away, you can't be too close, are there any guidelines for that taught to the officers?

A. We teach them preferred, seven to fifteen feet is the optimal range, because at this range you have the best of both worlds, you're going to be

A. We do teach them preferred areas.

Q. What are the preferred areas?

A. Well, you know, and they're not always possible. Preferred areas are going to be -- the most preferred area, but an area that is hard to access oftentimes, is the back.

Q. Why would the back be one of the preferred areas?

A. Less likelihood of a sensitive area being hit with the taser.

Q. Okay.

A. And also the back itself carries with it a lot of muscle mass, and you're not going to find -- bodies don't retain a lot of fat in the back, so we can access the muscle. Because fat in itself acts as an insulator. If you strike somebody in the abdomen and they have a big belly, the current needs to go through the belly, it's going to give you less effect perhaps. So on obese people the taser is not going to be as effective.

Q. Okay. Any other preferred areas besides the back that they're taught, that you teach?

A. Sure, we teach the best case scenario, you know, you're trying to increase the belt line so that

accurate and you're getting a nice spread.

There are going to be times though we teach where we can deploy that taser -- I tell them get a frog's hair away. I don't know how big a frog hair is, but I imagine it's pretty short.

In other words, I can press that taser right up on the arm and deploy it, you may have to do that, close quarter combat, close quarter fighting, close quarter defense. The distance -- you know, now, I tell people if you start getting 21, 25 feet out, odds are you're going to miss them. It's more of an issue of missing. And as you move in closer, my spread gets diminished so the taser won't be as effective. So if I'm right on top of you or you're on top of me and I use it in defense and I just get the probes right here (indicating), it's really going to be really just a pain compliance affecting that radial nerve in the forearm area, and I still have my entire body to fight you with. We like that seven to fifteen feet. As you move in closer the spread is less, so the possibility for it not being as effective is there. As you move out further the probability for missing is greater.

1 A. Yes.

2 Q. And those reports, we can agree, they don't have

3 any details in them, I think they just check

4 numbers, what type of an arrest was made and

5 then they give you the order of force that they

6 use?

7 A. They give you the order of force, they give you

8 the order of resistance, they give you any

9 injury information to both the actor and the

10 officer, the back page of it would.

11 Q. Okay. In that situation is that officer

12 required to give you any narrative describing

13 the situation or you're just going off those

14 boxes that are checked and the numbers that are

15 given to you?

16 A. I'm going off all the reports of the incident.

17 Q. So when you get the subject resistance report

18 you also get, along with it, the arrest report

19 and the investigative report for every --

20 A. I get all the reports that come with it, yes.

21 Q. So do you review every report for every subject

22 resistance you're given?

23 A. Every report.

24 Q. So you would have reviewed these reports back

25 around the time that it happened?

1 A. Yes, ma'am.

2 Q. Did you review them again since the lawsuit was

3 filed?

4 A. Yes, ma'am.

5 Q. I'm assuming -- well, let me not assume, back

6 when the incident happened do you actually

7 recall reviewing that report?

8 A. No, ma'am.

9 Q. Would it be fair to say there was nothing about

10 that report that sent up a red flag in your

11 mind?

12 A. No red flag, ma'am.

13 Q. Okay. In reviewing the report again was there

14 anything about the use of force that sent up a

15 red flag?

16 A. No, ma'am.

17 Q. Were you aware that Mr. Rucker has indicated

18 that he did not engage in any type of defensive

19 resistance at the scene?

20 A. No, ma'am, just what the report read.

21 Q. Hypothetically speaking, if Mr. Rucker, who is a

22 male in his twenties was stopped and there were

23 two officers on the scene with him and told him

24 to stay in his vehicle until backup arrived, if

25 they then proceeded to open the door and pull

79

1 Mr. Rucker out of the car and Mr. Rucker was not

2 resisting, defensively, aggressively, he was

3 asking why he was being stopped and pulled out

4 of the car, if a third officer arrived on the

5 scene and tased him as he was being pulled out

6 of the car, is that something that you would

7 want to look into further that would send up a

8 red flag?

9 MR. KENNEDY: I object to the form.

10 BY MS. GRAHAM:

11 A. How was he resisting?

12 Q. He wasn't resisting. He was being pulled out of

13 the car, officers grabbed him by each arm to

14 pull him out of the car.

15 MR. KENNEDY: Same objection.

16 BY MS. GRAHAM:

17 Q. And the third officer tased him as he was being

18 pulled out of the car.

19 MR. KENNEDY: Running objection to

20 form as to any questions requesting his opinion

21 of this matter.

22 BY MS. GRAHAM:

23 A. I would say he was probably resisting because

24 why did they have to pull him out of the car?

25 If they asked him and he didn't come, that's a

80

1 form of resistance in itself.

2 Q. What if they didn't ask him? They opened the

3 door -- once the third officer arrived they

4 opened the door and pulled him out of the car.

5 A. Is there a reason, is there a gun sitting next

6 to him?

7 Q. No, there's no weapon.

8 A. If the individual's just sitting there, for

9 example, if I was just sitting here like this on

10 a traffic stop and all of a sudden the door

11 opened, the police pulled me out of the car and

12 tased me, yes, it would raise a red flag.

13 Q. I'm asking this based upon your experience in

14 teaching this for ten years and your

15 certifications and what you actually teach your

16 officers. Now, obviously the officers testified

17 differently, they testified that he was being,

18 what I would think you would call a defensive

19 resister, that he was holding onto the steering

20 wheel and would not get out of the car. In that

21 situation, if we accept what the officers said

22 was true, and they ordered him to get out of the

23 car and he did not get out of the car, he was

24 asking why are you doing this, why are you

25 trying to get me out of the car and he held onto

the steering wheel as one of the officers said he did, the third officer, Marabello arrives on the scene and tells everyone to stand back, goes into the car and tases him, do you believe that would have been appropriate use of force under those circumstances?

MR. KENNEDY: If I could stop you a second. Do you want to add what Officer Novac said as well.

MS. GRAHAM: What did --

MR. KENNEDY: About the officer physically attempting to get him out by grabbing him and pulling him.

BY MS. GRAHAM:

Q. Schrock filed a supplemental report after the fact saying he tried a come-along first. That wasn't in the initial report, he filed that a couple days later. He tried a come-along, and that did not work. But Marabello wasn't on the scene for that point, he came as they were trying to get him out of the car. In that situation, he's not threatening them, he's not screaming at them, he's not assaulting them, but he is holding onto the steering wheel according to one of the officer's testimony. Would that

be appropriate use of force in your mind?

A. Yes.

Q. Okay. In the other scenario that I gave you, which is somewhat different, where he was not resisting in any way and there was no threat to him, but the door was open and the officers, two officers began to escort out and a third officer tased him while he was being escorted out, that is something that would send up a red flag in your mind?

A. Yes, because then there's no resistance, you don't need to use force.

(Deposition Exhibit Nos. 1 through 3 were marked for identification.)

BY MS. GRAHAM:

Q. Mr. Wright, I'm showing you three different exhibits that have been marked 1, 2 and 3, and these are policies from the City of Pittsburgh, and some of them, I think, we might have referenced during your deposition, so I want to just make sure we were talking about the same policies. The first one is, I believe, the Continuum of Control Policy; is that correct?

(Whereupon, the witness reviewed the document.)

BY MS. GRAHAM:

A. Yes, ma'am.

Q. Have you seen this document before?

A. Yes, ma'am.

Q. Is this something that you train your officers on when you receive these updates or reissue dates?

A. On reissue dates they are at the zones, the supervisors go over any changes.

Q. Okay. This particular Continuum of Control Policy which has been effective date of 3-23 of 2007, did you participate or provide any input in your capacity as the lead instructor for this particular policy?

A. Yes, ma'am.

Q. What input did you provide?

A. Specifically, if you go to the last page, Page 3 of 3, you'll see that the circle that's provided there, that was put in there based on my recommendation, and the reason why is because we are trying to get our officers into the mind set

that you pick the most reasonable force option based on the specific incident that you're dealing with, and we are trying to get away from this ladder mentality where you go step one, two, three, four, we're trying to get away from that. So we felt that this was a better system, this pie graph would be better served. Some agencies have gotten away from -- the Federal Law Enforcement Training Center, FLETC, they've gotten away from training force continuums altogether because they realize Graham vs. Connor changed, you know, the use of force and so now it's very specific, you have to look at that incident. It's easier to teach this method versus the ladder method.

Q. In looking at this chart that's at the bottom of that page, it seems to be on the outside of the five different levels of the continuum of control, is that correct, verbally noncompliant?

A. Yes.

Q. I'm sorry, I misspoke, the ones on the inside are the --

A. Options.

Q. -- options for continuum of control levels; is that correct?

1 A. Yes, ma'am.

2 Q. Okay. And the ones on the outside seem to be

3 the type of resistance you can encounter?

4 A. Yes, ma'am.

5 Q. Under passive resistance --

6 A. Yes, ma'am.

7 Q. -- it seems to be over the heading of verbal

8 control; is that correct?

9 A. It's in the order of verbal control and -- it's

10 hard to see because of the copy, you would have

11 these lines, and these lines come out and you

12 actually would have, you know, passive

13 resistance comes out slightly over here so this

14 graph gives you -- because basically, we want to

15 resolve passive resisters through verbal control

16 and these techniques of communication, but then

17 when that fails, you know, and this is, you

18 know, given -- there's room for this stuff to

19 start coming into play.

20 Q. Are your officers trained to attempt to not to

21 use the restraint and control if they have a

22 passive resistance, are they basically trained

23 don't go there unless you absolutely have to?

24 A. We train our officers when dealing with the

25 passive resister to try to use verbal

1 communication and use your officer presence to

2 successfully end this problem.

3 Q. Are they given any instruction or direction,

4 whatsoever, as to when you have a passive

5 resistance, if you need to go into restraint and

6 control, try this first?

7 A. When words fail and you have to go hands-on, we

8 teach -- for passive resister, and generally,

9 again, that is body weight, we're just using

10 body weight, then soft empty hand control is

11 going to be your most reasonable force option.

12 Q. Are they told, basically, to try that first

13 before they resort to the spray or the taser or

14 the empty hand?

15 A. For a passive resister, yes.

16 Q. Okay. This particular chart, is it supposed to

17 be shaded in, is that what you're telling me?

18 A. Yeah, there's -- it's not the best copy in the

19 world.

20 Q. Is there an original I could maybe see? Do you

21 have something that would have the shaded in

22 area a little better that I could look at, at

23 some point?

24 MR. KENNEDY: Do you want me to grab

25 mine? I might have a better copy right now.

1 MS. GRAHAM: If you do, that would be

2 great.

3 - - - -

4 (Whereupon, there was a brief pause in

5 the proceedings, and the witness and Ms. Graham

6 reviewed the document.)

7 - - - -

8 BY MS. GRAHAM:

9 Q. Mr. Wright, looking at -- Mr. Kennedy brought up

10 a little bit of a clearer graph. On your

11 exhibit, and I realize this is an estimation,

12 can you just draw in there with a line with a

13 pen where you believe the graph, basically,

14 should be on the exhibit copy?

15 A. I'm not an art major.

16 Q. It looks like it kind of goes to the V of

17 passive, is that correct, this shaded area

18 (indicating)?

19 A. Yes (marking document).

20 Q. And then the shaded area on the opposite side

21 seems to go to about the E.

22 A. (Marking document.) You can see restraint and

23 control has a wider range.

24 Q. Next, Exhibit 2, I think that might be use of

25 force of taser or taser policy, I'm not sure

1 what order I gave those to you?

2 A. The taser policy is Exhibit 2.

3 Q. Okay. In this particular taser policy did

4 you -- this one has an effective date of 3-10 of

5 '04. Do you know if there's a more up-to-date

6 policy? It was reissued on 1-3 of '05, so 1-3

7 of '05 is the latest date we have on here.

8 A. I don't know off the top of my head if there's a

9 more current policy.

10 Q. Did you participate in any way in providing

11 input into this policy?

12 A. Yes, ma'am.

13 Q. What input did you provide?

14 A. At one point, I actually made this policy and

15 then typed it, I should say. They gave me the

16 template, I typed it and I sent it on up to -- I

17 want to say at the time either Lieutenant Dixon

18 or Lieutenant Beidle, whoever was responsible

19 for helping to complete this, and I took what I

20 thought was the best policies of the various

21 departments across the country, and I took what

22 I thought was their best practices, and I took

23 into account our policy on use of force, Chapter

24 Five of the Crimes Code, put it altogether, and

25 I put, what I thought was, the best of the best

down and submitted it. Now, I know that Commander McNeilly had a lot of say in helping to design this too, Commander Catherine McNeilly, because, as I recall, she, on Page 4 of 6 -- she or her office helped design this taser probe, successfully discharge this little graph you see, her office had a lot to do with developing this. So I'm not the only person that helped design this, there was input. And we did gather input from other departments too.

Q. Okay. Under 5.2, this taser policy, it says situations in which the use of taser may be authorized include, but are not limited to, the following, and then it lists four examples. Do you see that?

A. Yes, ma'am.

Q. Is that information that you provided, or did that come from somebody else?

A. I don't know as I sit here and read this.

Q. You don't know then why those four particular situations were identified in this policy?

A. Let me read it.

Q. Sure.

(Whereupon, the witness reviewed the

document.)

BY MS. GRAHAM:

A. What's put in here are good examples of taser usage, cite some examples.

Q. But you don't recall if you provided these, so it would be hard for you to say why these four specific examples are listed; is that correct?

A. I'm pretty confident that they're listed because they're good examples of possible times to use the taser, I'm pretty comfortable in saying that.

Q. Okay. Do you know why only these four types of situations were listed?

A. Just examples. These are good -- prevent somebody from hurting themselves, it's a good example, this is something we want to show our officers.

Q. Exhibit 3 is the City's Use of Force Policy, reissue date of 1-3 of '05. Do you know if that's the most recent use of force?

A. I believe it is.

Q. Did you participate in providing any input into this policy?

A. I was one of the participants.

91

Q. Do you recall what input you provided?

A. We had a use of force committee, so a lot of us -- for me to say that this is me, I can't say that. It's a lot of input from a lot of people. That's true pretty much on all our policies, it's not one person, there's a lot of input from a lot of people.

Q. In your role do you have any responsibility to review these policies to determine whether or not they should be updated in any way? Like, for example, this policy Exhibit 3 is over four years old, did you play any role in reviewing them or do you know who does review them to determine whether or not the policies should be updated?

A. They are reviewed and updated as needed on pretty much, I'll say, an annual basis. All our policies are. I believe Lieutenant Jennifer Beidle handles that. And if it has to do with something that's in my area of expertise, then she calls me and she and I or whoever will go over it. So she's actually a person that I'm in constant contact with with these types of policies, use of force, because she's -- one of her jobs, and I believe it's in the intelligence

92

section, that she's handling a lot of these policies and making sure that they're reviewed and updated as needed.

Q. So if she felt that the taser policy, which Exhibit 2 is again over four years old, needed to be updated, she would, in all likelihood, contact you since you're one of the instructor -- you're the lead instructor who would be teaching officers about taser use; is that correct?

A. Yes, and I believe that no motor -- I believe since the federal consent decree took place back in the late '90s, that was one of the things that -- they have to be reviewed anyway. If they're following this procedure, I believe, and that's why I believe she does do it, and she's been doing it. They're going to be reviewed -- I believe they're going to be reviewed no matter what on a certain level. I don't know if it's annual, biannual, I don't know what the time is, but I believe they are reviewed at a certain time regardless.

Q. But as far as you can recall sitting here today, you don't recall there being a more recent taser policy than four plus years ago or use of force